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July 30, 2019

**VIA ECF**

The Honorable Magistrate Judge Robert W. Lehrburger  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007

**Re: *State of New York et al. v. Deutsche Telekom et al., No. 1:19-cv-05434-VM*  
Opposition to Plaintiffs' Motion to Compel Production of Documents  
Responsive to Plaintiffs' Second Set of Document Requests**

Dear Judge Lehrburger:

Deutsche Telekom AG ("DT") submits the following in opposition to Plaintiffs' letter seeking to compel the production of certain documents in response to their Second Set of Requests for Production of Documents to DT ("RFPs"). Plaintiffs' motion should be denied because DT has agreed to provide a reasonable response to Plaintiffs' RFPs. Plaintiffs made the unusual decision to file this motion to compel a full day before DT timely served its responses and objections, which described DT's planned production. *See* Exhibit A. Moreover, it is not clear whether Plaintiffs have fully reviewed the document production that DT made to the U.S. Department of Justice ("DOJ") and the Plaintiff States nearly ten months ago, since doing so would show that DT did in fact produce the documents they claim are not in DT's production.

Plaintiffs' RFPs seek documents from January 1, 2015 to the present on a range of topics that largely overlap with those selected by the DOJ thirteen months ago as part of its investigation ("Second Request").<sup>1</sup> DT produced to DOJ and the Plaintiffs nearly 100,000 pages

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<sup>1</sup> DT's responses state that it will produce documents in response to RFP specifications 1-3 and offer to confer with Plaintiffs on search terms. Specifications 1.a-f and 2 seek documents about competition and consolidation in the U.S. telecommunications market. Specifications 1.g-h seek documents related to what Plaintiffs describe as "spinoffs" of T-Mobile and Sprint assets. Specification 3 asks for text and other messages responsive to RFPs 1 and 2. In addition, specification 4 seeks "transcripts and recordings

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of documents created between January 1, 2015 and June 25, 2018 (“Second Request Period”) in response to the Second Request. The documents came from the files of DT’s Chief Executive Officer Timotheus Höttges; Member of the Deutsche Telekom AG Board of Management, USA and Group Development Thorsten Langheim; and Senior Vice President for Finance US and Group Development Philipp Pohlmann.

Plaintiffs now seek documents created in the year following the Second Request Period. As stated, DT agreed in its responses to make a reasonable production of those documents. However, Plaintiffs go a step further and also ask the Court to compel DT to search yet again for additional documents created during the three-and-a-half-year Second Request Period and to add two more junior officials to the search group.

Plaintiffs advance three arguments as to why DT should produce more documents from the Second Request Period. *First*, Plaintiffs claim that “DT did not [] produce documents related to” (i) two 2015 workshops on the U.S. telecommunications market orchestrated by [REDACTED] for DT executives or (ii) unnamed “analyses” by former Vice President of Portfolio Strategy Steffen Stern. This is wrong. DT produced the responsive documents about the workshops, totaling 360 pages. *See* DT-DOJ-00094507; DT-DOJ-00085994.

As to Mr. Stern, DT’s counsel explained to Plaintiffs on July 22 and again July 25 (before Plaintiffs filed their motion) that Mr. Stern left DT in 2016. Counsel also told Plaintiffs that DT believed his documents were removed from DT’s system that same year pursuant to DT’s standard document retention protocol. DT has confirmed that Mr. Stern’s documents were not retained after June 2016. Moreover, DT has produced the responsive documents prepared or received by Mr. Stern that were in the files of Messrs. Hottges, Langheim, and Pohlmann.

*Second*, Plaintiffs charge that “DT’s production does not include text messages” or certain other modes of communication. This is also wrong. As we explained to Plaintiffs’ counsel on July 25, DT searched for and collected text messages in responding to the Second Request, and DT produced 170 responsive text-message *conversations*, comprising many hundreds (perhaps thousands) of individual text messages. *See* Appendix A, which contains the Bates numbers of these texts.

*Third*, Plaintiffs want DT to add a second new custodian for the Second Request Period, DT’s Vice President for Investor Relations Hannes Wittig. Doing so would be unduly burdensome because it would cost tens of thousands of dollars and because Mr. Wittig has no responsibility for DT’s or T-Mobile’s strategic operations or pricing. DT has already produced thousands of documents on the same issues from Mr. Wittig’s superiors, as well as 1,027 documents that Mr. Wittig sent or received, which were located in their files. There is no

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of [DT] investor presentations.” DT directed Plaintiffs to DT’s public website, where these materials are located.

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compelling reason why DT should have to incur the substantial costs involved in searching for more.

Plaintiffs' arguments with respect to the documents they seek for post-Second Request production are also not valid. DT has advised Plaintiffs that DT intends to produce documents from the year following the Second Request Period. Plaintiffs' letter brief concedes this in a footnote buried on the last page, and DT's July 26 responses to the RFPs confirm it. Plaintiffs' footnote also asserts that DT's "potential limited production discussed falls well short of addressing the failings in DT's productions to date." But it is not clear how Plaintiffs can make this assertion given that Plaintiffs apparently did not fully review the contents of those productions. In any event, DT's timely submitted July 26 responses state that DT "will produce responsive, non-privileged documents from or addressed to Timotheus Höttges, Thorsten Langheim, and Philip Pohlmann, covering the time period from June 26, 2018 to June 30, 2019, that were returned by a reasonable set of search terms." DT also stated in its responses that it is willing to meet and confer with Plaintiffs regarding the search terms. This production is more than reasonable.

In short, the Court should deny Plaintiffs' motion to compel because the documents that DT produced for the Second Request period are more than sufficient, DT has represented that it will produce a reasonable response for the post-Second Request Period, and the requests that DT has not agreed to satisfy are either impossible to satisfy, unduly burdensome, or both. DT will continue to work in good faith with Plaintiffs to resolve any disagreements regarding DT's responses to Plaintiffs' RFPs.

Respectfully submitted,

**WILSON SONSINI GOODRICH & ROSATI**

A handwritten signature in blue ink, appearing to read "Joshua Soven".

Joshua H. Soven (*pro hac vice*)  
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*Counsel for Defendant Deutsche Telekom AG*

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**Appendix A:**  
**Bates Numbers of DT Text-Message Conversations**  
**Produced to DOJ and Plaintiff States**

DT-DOJ-00021690	DT-DOJ-00022307	DT-DOJ-00022308	DT-DOJ-00068721	DT-DOJ-00068724
DT-DOJ-00068731	DT-DOJ-00068737	DT-DOJ-00068746	DT-DOJ-00068747	DT-DOJ-00068750
DT-DOJ-00068754	DT-DOJ-00068756	DT-DOJ-00068760	DT-DOJ-00068761	DT-DOJ-00068762
DT-DOJ-00068771	DT-DOJ-00068776	DT-DOJ-00068995	DT-DOJ-00068996	DT-DOJ-00069111
DT-DOJ-00069115	DT-DOJ-00069119	DT-DOJ-00087530	DT-DOJ-00088925	DT-DOJ-00089048
DT-DOJ-00089080	DT-DOJ-00089081	DT-DOJ-00089088	DT-DOJ-00089101	DT-DOJ-00089293
DT-DOJ-00089297	DT-DOJ-00089313	DT-DOJ-00089319	DT-DOJ-00090515	DT-DOJ-00090517
DT-DOJ-00090524	DT-DOJ-00090533	DT-DOJ-00090536	DT-DOJ-00090547	DT-DOJ-00090550
DT-DOJ-00090566	DT-DOJ-00090568	DT-DOJ-00046534	DT-DOJ-00049328	DT-DOJ-00049329
DT-DOJ-00049330	DT-DOJ-00049332	DT-DOJ-00049334	DT-DOJ-00049336	DT-DOJ-00049337
DT-DOJ-00049338	DT-DOJ-00049341	DT-DOJ-00049597	DT-DOJ-00099388	DT-DOJ-00099389
DT-DOJ-00099390	DT-DOJ-00099483	DT-DOJ-00099682	DT-DOJ-00052291	DT-DOJ-00052293
DT-DOJ-00052296	DT-DOJ-00052679	DT-DOJ-00052680	DT-DOJ-00052681	DT-DOJ-00052683
DT-DOJ-00052848	DT-DOJ-00052853	DT-DOJ-00052856	DT-DOJ-00052858	DT-DOJ-00052860
DT-DOJ-00052863	DT-DOJ-00052866	DT-DOJ-00052871	DT-DOJ-00052872	DT-DOJ-00052875
DT-DOJ-00052877	DT-DOJ-00052879	DT-DOJ-00052880	DT-DOJ-00052882	DT-DOJ-00052883
DT-DOJ-00052886	DT-DOJ-00052890	DT-DOJ-00052893	DT-DOJ-00052895	DT-DOJ-00052899
DT-DOJ-00052904	DT-DOJ-00052907	DT-DOJ-00052913	DT-DOJ-00052914	DT-DOJ-00052917
DT-DOJ-00052919	DT-DOJ-00052923	DT-DOJ-00052924	DT-DOJ-00052926	DT-DOJ-00052930
DT-DOJ-00052931	DT-DOJ-00052932	DT-DOJ-00052935	DT-DOJ-00052936	DT-DOJ-00052939
DT-DOJ-00052943	DT-DOJ-00052946	DT-DOJ-00052950	DT-DOJ-00052952	DT-DOJ-00052956
DT-DOJ-00052957	DT-DOJ-00052958	DT-DOJ-00052959	DT-DOJ-00052961	DT-DOJ-00052964

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DT-DOJ-00052965	DT-DOJ-00054106	DT-DOJ-00054107	DT-DOJ-00054872	DT-DOJ-00054873
DT-DOJ-00054874	DT-DOJ-00055002	DT-DOJ-00055003	DT-DOJ-00055004	DT-DOJ-00055006
DT-DOJ-00055008	DT-DOJ-00055010	DT-DOJ-00055012	DT-DOJ-00055014	DT-DOJ-00055016
DT-DOJ-00055018	DT-DOJ-00055020	DT-DOJ-00055022	DT-DOJ-00055024	DT-DOJ-00055026
DT-DOJ-00055029	DT-DOJ-00055032	DT-DOJ-00055033	DT-DOJ-00055035	DT-DOJ-00055041
DT-DOJ-00055042	DT-DOJ-00055044	DT-DOJ-00055045	DT-DOJ-00055048	DT-DOJ-00055054
DT-DOJ-00055056	DT-DOJ-00055058	DT-DOJ-00055062	DT-DOJ-00055063	DT-DOJ-00055067
DT-DOJ-00055068	DT-DOJ-00055069	DT-DOJ-00055072	DT-DOJ-00055073	DT-DOJ-00055076
DT-DOJ-00055079	DT-DOJ-00055083	DT-DOJ-00055084	DT-DOJ-00055086	DT-DOJ-00055090
DT-DOJ-00055091	DT-DOJ-00055092	DT-DOJ-00055093	DT-DOJ-00055098	DT-DOJ-00055101
DT-DOJ-00059442	DT-DOJ-00059443	DT-DOJ-00059454	DT-DOJ-00059556	DT-DOJ-00061115
DT-DOJ-00061119	DT-DOJ-00061203	DT-DOJ-00061204	DT-DOJ-00061225	DT-DOJ-00061226